

Sioux Valley Wireless
P.O. Box 20
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WRITTEN EX PARTE PRESENTATION

May 30, 2004

Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WT Docket No. 03-66, IB Docket No. 02-364, ET Docket No. 00-258

Dear Ms. Dortch:

I am writing on behalf of Sioux Valley Wireless ("SVW") to once again thank you for visiting our state last week to hear our concerns. I also want to take this opportunity to more fully express SVW's serious concern that adoption of staff proposals currently being considered by the Commission could have a devastating adverse impact on the services that SVW is providing the public in and around Sioux Falls, SD using MDS and ITFS spectrum.

Through the Commission's 1996 MDS auction and a variety of secondary market transactions, SVW has accumulated use of the 33 MDS and ITFS channels in the Sioux Falls, SD BTA. Today, SVW uses those channels to deliver a combination of video and broadband wireless Internet services to over 6,000 (mostly) rural subscribers. Our wireless MDS Internet service currently provides service to more than 2,000 subscribers (many of whom have access to no other broadband service) and continues to grow nicely each month.

Over the past 15 years, SVW has followed all FCC requirements and has fully paid the purchase price for the Sioux Falls BTA. As the Commission's objectives for MDS and ITFS have shifted over the years, we have kept pace – launching one of the nation's most successful wireless cable video systems initially, and then adding high-speed Internet services when authorized by the Commission. Over this period, we have provided valuable services to the public (many of whom have no other source for our services) and have provided a variety of ITFS partners with services and revenue.

SVW supports adoption of the Coalition Proposal that was advanced by the Wireless Communications Association and the ITFS leadership. We do so because it recognizes the importance of preserving the relatively few successful video systems such as ours by providing an "MVPD opt-out" that will allow us to continue to operate our current

system for as long as local marketplace conditions dictate that it is the best use of our spectrum. We certainly would not be surprised if, over time, the public's needs and demands change such that we will want to transition to the new bandplan. The decision as to what services best meet the needs of Sioux Falls, however, is best made by local licensees rather than by a regulatory dictate from Washington.

Given that we are currently utilizing all of our spectrum, we must strongly oppose any proposed bandplan that would take spectrum from incumbent licensees in order to create two new MDS channels that would be auctioned. Simply as a matter of fundamental fairness, the Commission should not even seriously consider taking from SVW spectrum that it acquired through the 1996 MDS BTA auction and has been using ever since to provide valuable services to the public. To take 12 MHz of spectrum from us would cause a complete disruption of our and seriously undermine our competitive position in the marketplace. Moreover, there is ample opportunity for newcomers to secure spectrum through leasing MDS and ITFS channels, through acquiring existing MDS licenses, and through participation in the upcoming FCC auction of ITFS "white space." Indeed, the only company that has been pressing for rules to promote access for new entrants has already been able to acquire channel rights in over 100 markets in just a few short months. Since the MDS/ITFS secondary market is so obviously working, and since new entrants have access to a wide range of other licensed and unlicensed spectrum in addition to MDS/ITFS to provide broadband services, there is no need to devastate companies like SVW to promote new entry.

SVW is pleased that the proposal before the Commission attempts to address the relocation of MDS channels 1 and 2/2A from the 2150-2162 MHz band – our more than 2,000 Internet access customers all utilizing those channels for subscriber-to-base transmissions and the more than three years of regulatory uncertainty over this band has been troubling. However, we do not believe that the staff proposal presently before the Commission sufficiently addresses the need of hybrid video/broadband systems such as ours for MDS replacement spectrum. Indeed, we understand that the proposal would only give us an additional 4 MHz of spectrum at 2486-2500 MHz to replace the 10 MHz we are using at 2150-2160 MHz. We assume that it will be the responsibility of the winners of the AWS auction (the beneficiaries of our relocation out of 2150-2160 MHz) who will be responsible for funding the construction of a new system that will operate in the replacement spectrum, as well as the replacement of all subscriber equipment. While it may be possible for that auction winner to provide us with capacity equivalent to that we have today with less than 10 MHz using more advanced technologies, SVW does not believe that just 4 MHz of additional spectrum will be enough. Thus, unless the Commission provides sufficient relocation spectrum, it may never be possible for SVW to relocate and thus AWS deployment will be prevented.

We believe, however, that the relocation spectrum shortfall can be addressed by reallocating more than just 4 MHz from the MSS allocation immediately below 2500 MHz. The Commission recently sought comment on the possible reallocation of 11 MHz of the MSS allocation at 2483.5-2500 MHz for other services. SVW believes that by reallocating the 6-8 MHz below 2500 MHz to MDS and adopting the same inter-service

interference protection rules that currently govern the boundary between MSS and MDS/ITFS, the Commission can solve the MDS relocation problem while still providing MSS with more spectrum than the Commission initially proposed.

Finally, we are disturbed by reports that the Commission is not going to adopt rules to govern the relocation of MDS channels 1 and 2/2A at this time. There is absolutely no reason to continue the regulatory uncertainty that we have faced since the Commission first proposed reallocation of those channels 3 ½ years ago. The Third Notice of Proposed Rulemaking in ET Docket No. 00-258 squarely raised the question of how relocation should be governed, formal comments were filed, and WCA again addressed the issue twice when it submitted proposal for relocating MDS to different bands.

Our industry will be re-vitalized though the FCC adoption of the Coalition band-plan proposal, as written. Many long-time experts in our industry worked long and hard to cover all the issues, including an MVPD opt-out for system operators such as us. We support the Coalition plan and hope that it will be approved in short order.

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